

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	No. 61751-6-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
D.C. (DOB: 09/07/92),	)	UNPUBLISHED
	)	
Appellant.	)	FILED: <u>June 15, 2009</u>
	)	
	)	

Cox, J. — Under the totality of circumstances test, an informant’s tip provides reasonable suspicion sufficient to justify an investigatory stop if “it possesses sufficient ‘indicia of reliability.’”<sup>1</sup> Here, a citizen-informant identified herself by name, address, and gave police a description of illegal activity and identified where the illegal activity had occurred. Because this record shows that a citizen-informant identified herself to police and gave the necessary supporting information in her tip, the officer’s reliance on the tip in conducting an investigatory stop of D.C. was proper. The trial court therefore properly denied D.C.’s motion to suppress the evidence of a firearm discovered during the investigatory stop. We affirm the juvenile court order adjudicating D.C. guilty of second degree unlawful possession of a firearm.

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<sup>1</sup> State v. Sieler, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980) (quoting Adams v. Williams, 407 U.S. 143, 147, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972)).

On the afternoon of January 18, 2008, Officer Justin Wilson responded to a call described as a “juvenile problem” at an address in a Federal Way apartment complex. The information he had from dispatch was that the suspect had shown the reporting party’s son a firearm that was in his waistband. The reporting party gave a detailed physical description of the suspect, who she said was known to her son as “[D.C.]”

As Officer Wilson was responding to the address, his attention was drawn to two males at a bus stop because one ducked when he saw the officer and the other made eye contact. The one who made eye contact matched the description of D.C. Officer Wilson turned his vehicle around and activated his emergency lights. He exited his vehicle and yelled D.C.’s first name. D.C. looked at the officer. Officer Wilson added, “hey [D.C.]” D.C. stated, “yeah, what’s the problem.” The officer drew his firearm and ordered D.C. to the ground. He asked D.C. if he had a firearm, and D.C. admitted that he did. Officer Wilson conducted a frisk of D.C. and located a handgun in the waistband of D.C.’s pants.

The State charged D.C. with second degree unlawful possession of a firearm under RCW 9.41.040(2)(a)(iii). After a fact-finding hearing, the juvenile court adjudicated him guilty as charged.

D.C. appeals.

### **INVESTIGATORY STOP**

D.C. argues that the trial court erred in denying his CrR 3.6 motion to

suppress physical evidence because the informant's tip used to justify the officer's investigatory Terry<sup>2</sup> stop was unreliable. We disagree.

We review factual findings following a motion to suppress for substantial evidence.<sup>3</sup> We review conclusions of law in the order pertaining to the suppression of evidence de novo.<sup>4</sup>

To justify an investigatory stop, an officer must have a reasonable, articulable suspicion, based on specific, objective facts, that the person seized has committed or is about to commit a crime.<sup>5</sup> A reasonable suspicion is the "substantial possibility that criminal conduct has occurred or is about to occur."<sup>6</sup>

An informant's tip can provide police a reasonable suspicion to make an investigatory stop.<sup>7</sup> This court recently reiterated that the legal standard for determining whether police suspicion resulting from an informant's tip is sufficiently reasonable to support a Terry stop is the "totality of the circumstances" test announced in Illinois v. Gates,<sup>8</sup> not the two-part reliability

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<sup>2</sup> Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

<sup>3</sup> State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

<sup>4</sup> State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003).

<sup>5</sup> State v. Duncan, 146 Wn.2d 166, 172, 43 P.3d 513 (2002) (citing Terry, 392 U.S. at 21).

<sup>6</sup> State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986).

<sup>7</sup> State v. Hopkins, 128 Wn. App. 855, 862, 117 P.3d 377 (2005) (citing Sieler, 95 Wn.2d at 47).

<sup>8</sup> 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

inquiry derived from Aguilar v. State of Texas<sup>9</sup> and Spinelli v. United States<sup>1</sup> that is used to make determinations of probable cause for purposes of obtaining a search warrant.<sup>11</sup> Under the totality of circumstances test, an informant's tip provides reasonable suspicion sufficient to justify an investigatory stop if "it possesses sufficient 'indicia of reliability.'"<sup>12</sup>

The central issue in this case is whether, under the totality of the circumstances test, the informant's tip possessed these "indicia of reliability" and thus justified the officer's suspicions that D.C. was in unlawful possession of a firearm. Under the totality of the circumstances test, a reviewing court determines whether an informant's tip possesses the required "indicia of reliability" by inquiring whether there exist (1) circumstances suggesting the informant's reliability, or some corroborative observation which suggests either (2) the presence of criminal activity or (3) that the informer's information was obtained in a reliable fashion.<sup>13</sup>

Citizen-informants, as opposed to professional informants, are presumed to be reliable sources of information.<sup>14</sup> Where a citizen-informant identifies

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<sup>9</sup> 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964).

<sup>1</sup> 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969).

<sup>11</sup> See State v. Lee, 147 Wn. App. 912, 916, 199 P.3d 445 (2008) (citing State v. Randall, 73 Wn. App. 225, 228-29, 868 P.2d 207 (1994)).

<sup>12</sup> Sieler, 95 Wn.2d at 47 (quoting Williams, 407 U.S. at 147).

<sup>13</sup> State v. Marcum, \_\_\_ Wn. App. \_\_\_, 205 P.3d 969, ¶ 20 (2009).

<sup>14</sup> State v. Wakeley, 29 Wn. App. 238, 241, 628 P.2d 835 (1981).

himself or herself by name, gives his or her address, phone number, and other background information, the police may react in the belief the report comes from a reliable source.<sup>15</sup>

Here, Officer Wilson was dispatched to a “juvenile problem” as a result of a 911 call made by the informant. The informant gave her name and address and told the dispatcher that a person named [D.C.] had shown her son a firearm that was in his waistband. She gave a detailed physical description of D.C. She also indicated where he could be found. Upon approaching the area indicated by the citizen-informant, the police saw the person fitting D.C.’s description. Drawing his weapon, the officer asked D.C. whether he was armed. D.C. confirmed that he was.

We conclude that the informant’s tip had sufficient indicia of reliability to justify Officer Wilson’s seizure of D.C. Unlike the report in State v. Sieler,<sup>16</sup> the informant’s report was not a bare conclusion. She reported that D.C. had shown her son a firearm he held in his waistband and gave an address at which this occurred. She gave a detailed description of D.C., the name by which he was known to her son, and information that he possibly resided in the same apartment complex. The informant gave her name and address to police and described how she had obtained the information. Officer Wilson properly reacted in the belief that the information came from a reliable source.

D.C. argues for the first time on appeal that the detention and resulting

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<sup>15</sup> Id.

<sup>16</sup> 95 Wn.2d 43, 621 P.2d 1272 (1980).

search was invalid because the basis of the stop was a tip from a “named but essentially anonymous caller.” He fails to explain why we should consider this argument under RAP 2.5(a).

In any event, he cites to two anonymous tipster cases for support: Florida v. J.L.<sup>17</sup> and State v. Jones.<sup>18</sup> In J.L., an unknown caller at an unknown location reported that a young man at a particular bus stop was carrying a gun.<sup>19</sup> The court held that the anonymous tip, without more, did not justify the resulting Terry stop.<sup>2</sup> In Jones, a police officer was parked on the side of a road when he observed the driver of a passing truck indicate with hand signals that the car in front of him was weaving on the road.<sup>21</sup> The only basis for establishing the reliability of the truck driver informant was a company name on the side of the truck.<sup>22</sup> Division Three of this court held that the tip from the citizen informant required more indicia of reliability to justify the subsequent stop.<sup>23</sup>

Here, the record shows that the tipster was not anonymous. While it is true that the trial court’s findings of fact refer only to a “reporting party” and not

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<sup>17</sup> 529 U.S. 266, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000).

<sup>18</sup> 85 Wn. App. 797, 934 P.2d 1224 (1997).

<sup>19</sup> J.L., 529 U.S. at 268-70.

<sup>2</sup> Id. at 274.

<sup>21</sup> Jones, 85 Wn. App. at 799.

<sup>22</sup> Id. at 800.

<sup>23</sup> Id. at 799.

to the informant by name, the record shows that D.C. did not raise the issue of anonymity below. The record also indicates that the State made the informant available to testify, if necessary.

This case is distinguishable from J.L. and Jones because here the citizen-informant is known. D.C. cannot now bootstrap an anonymity argument on this record where it is clear the State would have been able to prove the informant's identity had the issue been raised below.

We affirm the order of disposition.

Cox, J.

WE CONCUR:

Edington, J.

Becker, J.